

DESERT TORTOISE COUNCIL

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Via email only

16 August 2021

ATTN: Ronelle Candia, Supervising Planner
Kern County Planning and Natural Resources Department
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Phone: (661) 862-8997
E-mail: candiar@kerncounty.com

RE: Draft Environmental Impact Report for Bellefield Solar Project by 50LW 8ME LLC
(8Minute Energy) (PP20403)

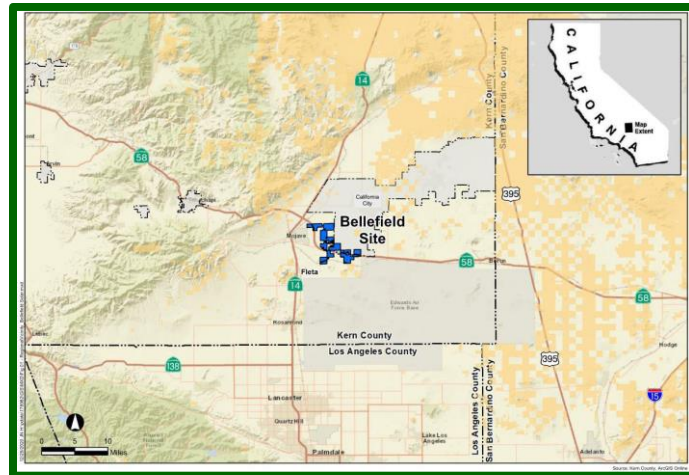
Dear Ms. Candia,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

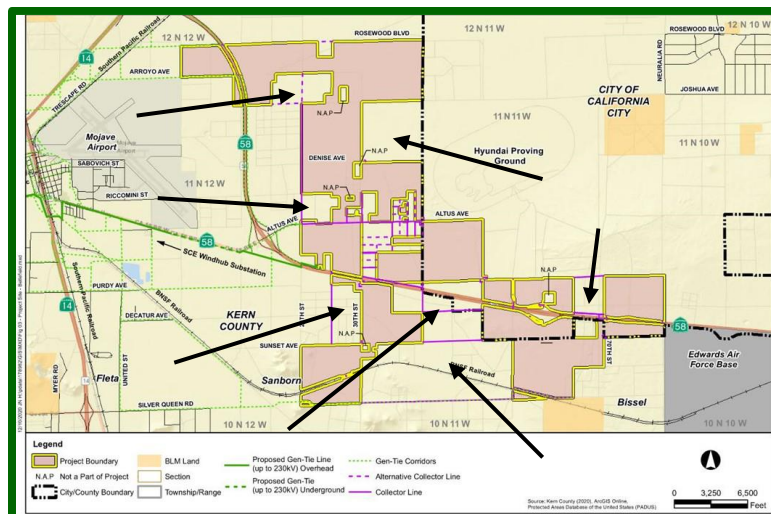
We appreciate this opportunity to provide comments on the above-referenced project, and that Kern County contacted the Council directly with the opportunity to comment on this project. Given the location of the proposed project in habitats occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities authorized by Kern County Planning and Natural Resources Department (Kern County). Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project. Also, we incorporate by reference our 17-page comment letter on the Initial Study for this project that was submitted on February 15, 2021 (Desert Tortoise Council 2021).

Unless otherwise noted or referenced, all page numbers pertain to the Draft Environmental Impact Report (Draft EIR) dated July 2021. The unpaginated Notice of Availability (NOA) provides the following project description and location: “The project includes a request for land use entitlements necessary to facilitate the construction and operation of a solar photovoltaic power generating facility and associated infrastructure necessary to generate up to 1,500 megawatts of renewable energy and 1,500 megawatt hours of energy storage capacity on approximately 8,371 acres of privately-owned land. The project site is located east of the community of Mojave and the Mojave Air and Space Port Airport, straddling State Route (SR) 58, and is just west and south of the Hyundai Proving Ground.”

Unlike many solar facilities where the arrays are contiguous, this one is relatively dispersed over a large area, as shown in the site map from the unpaginated NOA. So, although the footprint of the direct impact is reported as being 8,371 acres, the dispersed nature of the project will have both direct and indirect impacts over an area much larger than this acreage, which is the “action area.”



Though not surrounded by the project (depicted by pink polygons below), we expect biological resources in the adjacent, yellow-colored areas (indicated by arrows) will be directly and indirectly impacted:



The format for our comments that follow is to cite the page number from the Draft EIR, provide the verbatim statement from that page in italics, then follow that with our specific comments and recommendations.

Page 1-1-54, MM 4.4-9KC.c from Table 1-7: *“Clearance surveys shall adhere to the current United States Fish and Wildlife Service clearance survey protocols described in the Desert Tortoise Field Manual, including a minimum of two clearance passes to be completed after desert tortoise-proof fencing is installed, which shall coincide with heightened desert tortoise activity from late March through May and September through October.”* For clarification, please be sure that the proponent realizes that the site is not considered to be clear until no tortoises are found during two consecutive surveys. This means that if a tortoise is found on the third survey of the site, two subsequent surveys where no tortoises are found will be required. This is particularly important where hatchling and small subadult tortoises may be missed by even experienced, conscientious biologists, particularly since egg shell fragments were found by EnviroPlus Consulting. Note that this and the next few comments also pertain to Section 4.4 in Table 1-7, which reiterates all the same measures for Biological Resources. So, any changes made to this section in the Final EIR should also apply to those measures listed on pages 1-1-127 through 1-1-147.

Page 1-1-54, MM 4.4-9KC.c from Table 1-7: *“The Designated Biologist(s) shall perform pre-activity surveys for desert tortoise and shall remain on-site daily until the construction period ends or exclusion fencing has been installed to preclude desert tortoises from entering a given work area (work area is completely enclosed with exclusionary fence).”* We ask that this provision be supplemented with a statement like the following: *“The Designated Biologist will remain available even after the fence is installed and be called to the site if a tortoise or Mohave ground squirrel is found inside the fence, emphasizing in the tortoise awareness program that only agency-authorized biologists, not construction workers, are allowed to handle tortoises. The Designated Biologist shall monitor the exclusionary fence on a weekly basis after its installation to ensure its integrity and function are maintained until the end of construction.”* These recommendations are intended to supplement related protections described in MM 4.4-9KC.d.

Page 1-1-55, MM 4.4-9KC.d from Table 1-7: *“If passive relocation is not possible, desert tortoise and/or Mohave ground squirrel may also be translocated in accordance with an United States Fish and Wildlife Service and/or California Department of Fish and Wildlife approved Translocation Plan.”* We were unable to find a formal translocation plan among the documents provided by Kern County. Even so, we note that recent agency-approved translocation plans have failed to protect displaced tortoises from predators that have decimated those tortoise populations. For example, about a third of the 139 tortoises recently displaced from the Yellow Pine Solar Project in southern Nevada were lost to badger predation, which was unforeseen by the state and federal resource agencies approving that translocation plan.

It is essential that the translocation plan for this project analyze recent success and failures associated with the expansions of Fort Irwin National Training Center and Twentynine Palms Marine Corps Air-to-Ground Combat Center, and numerous solar projects constructed over the past five-to-ten years (including Yellow Pine Solar Project in southern Nevada and the solar towers in Ivanpah Valley, near Stateline, Nevada) displacing thousands of tortoises to avoid known

problems associated with those efforts. Given the results from Yellow Pine, it is important to survey for the presence and density of tortoise predators in and adjacent to the translocation area. The likelihood for increased predation on translocated tortoises should be analyzed as part of the translocation plan, and proactive measures implemented to assure that translocated tortoises are not lost to predation in the first few years following translocation. It is also important to identify proponent-owned lands or Bureau of Land Management (BLM) lands that are intended to receive tortoises “passively” translocated.

Page 1-1-55, MM 4.4-9KC.f from Table 1-7: “*Work outside areas with desert tortoise exclusion fencing shall only occur during daylight hours where desert tortoise are determined to be present*” (emphasis added in regular font). The final clause suggests that there would be preconstruction surveys in unfenced areas and that a biologist would be required to be present if evidence of tortoises is found. Given the mobility of tortoises, we recommend that ALL activities outside the exclusion fences should be monitored even where no evidence of tortoises is found.

Page 1-1-57, MM 4.4-9KC.j from Table 1-7: “*Intentional killing or collection of either plant or wildlife species, including listed species, in the project site and surrounding areas shall be prohibited*” (emphasis added in regular font). Certainly, everyone understands that desert tortoise and Mohave ground squirrels are protected because they are listed species. We suspect that this statement should read “unlisted species,” and include common species like snakes, and particularly rattlesnakes, which are likely to be killed if not expressly prohibited.

Page 4.4-4, Protocol Surveys: The Council does not agree with the determination given in this section that “*The ‘action area is synonymous with the previously defined ‘project area.’*” As stated above, we believe that there will be indirect impacts and perhaps direct impacts to adjacent habitats signified by the arrows depicted on page 2 of this letter. We note for example that there is no discussion on the likely “heat sink” effects of this project on adjacent lands not included within the “project area.”

We ask that the Final EIR provide supplemental information about the potential heat sink impacts to tortoises and other species, document findings of recently-constructed solar projects in the region, and reconsider if it is prudent to restrict the action area to only the delineated project area. We understand that 8Minute Energy has developed thousands of acres of desert habitats within 10 miles of this proposed project, and that they have been asked to perform studies that document ancillary impacts to adjacent habitats. However, no results of these studies are published in this Draft EIR, leading us to conclude that no studies have been performed. Please clarify if any indirect impact studies have been performed by 8Minute Energy in the region, and if there have been any, please summarize the results in pertinent sections of the Final EIR, especially with respect to the tortoise.

Page 4.4-6, Mohave ground squirrel (MGS): We contend that the discussion given in this section is inadequate to determine that MGS are absent from the subject property. We know for example that MGS were captured in 2020 at the proposed Kudu site, located approximately six miles north of the northern boundary of the subject property (see #4 in Figure 3-21 on page 3-55 of the Draft EIR), which is coincidentally being planned for solar development by 8Minute Energy. Given these recent, nearby results alone, in the absence of focal MGS surveys [CDFG 2003 (revised

2010)], the proponent must assume presence and mitigate accordingly, or complete focal surveys and document MGS absence. Equally important, when the proponent seeks federal and state incidental take permits, compensatory habitats must be occupied by and secured and managed in perpetuity for both tortoises and MGS (see our comments pertaining to page 4.4-1). It is also appropriate in the Final EIR to revise the information given in the first paragraph at the top of page 4.4-7, which fails to acknowledge the proponent's focal studies last year that detected MGS, erroneously stating it has been 17 years since MGS have been detected in the region.

Page 4.4-1, Desert Renewable Energy Conservation Plan (DRECP): The discussion given here is a bit truncated and the following conclusion misleading: “*No State or local government has adopted the DRECP for application to private lands* and the DRECP therefore does not apply to the project site” (emphasis added in regular font). Since the record of decision for the DRECP (BLM 2016) significantly altered the protection of desert tortoises and MGS as previously provided for in the record of decision for the West Mojave Plan (BLM 2006), in mitigating impacts, the proponent will undoubtedly need to acquire compensation habitats within conservation areas codified by the DRECP. So, although the first part of the statement is accurate, regional conservation delineated and defined by the DRECP will undoubtedly apply to mitigating impacts associated with project development.

In addition to this clarification in the Final EIR, it is appropriate that Kern County also map the location of this project relative to designated Development Focus Areas (DFAs) identified in the DRECP, which encompass both BLM and private lands. It also seems appropriate to augment the cumulative effects analysis in Section 3.8 to show how the DRECP does or does not promote solar development in the region surrounding the subject property, which would be best depicted in a map.

Page 4.4-0, Mohave ground squirrel: This information needs to be updated. For example, we know that Sundance Biology trapped the Hyundai-Kia Proving Grounds in 2020, which is not reflected in this discussion in the Draft EIR. Although no MGS were captured in 2020 (Steve Boland, personal communication on 8/13/2021), absence may have been in response to a wet year when MGS are apparently less detectable than during dry years (CMBC 2019). In any case, the information presented is not accurate and should include the results of the recent Kudu and Hyundai-Kia surveys. Since conclusions that MGS are absent are not supported by project-specific data, the proponent should implement current standards, which are that the proponent must either trap and document absence or mitigate as if MGS are present.

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during any authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other Kern County projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this particular project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Regards,



Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc: California State Clearinghouse, state.clearinghouse@opr.ca.gov

Literature Cited

[CDFW] California Department of Fish and Game. 2003 (revised 2010). Mohave ground squirrel survey guidelines. Unpublished guidelines produced by CDFG (currently CDFW = California Department of Fish and Wildlife). Sacramento, CA.

[CMBC] Circle Mountain Biological Consultants, Inc. 2019. Cuddeback-Kramer Preserve: 2019 Annual Report, San Bernardino County, California. Unpublished annual report prepared by Ed LaRue for Mojave Environmental Holdings, LLC on behalf of CDFW and USFWS. Wrightwood, CA.

[Council] Desert Tortoise Council. 2021. Initial Study and Notice of Preparation of a Draft Environmental Impact Report for the Bellefield Solar Project, Kern County, California. 17 pp.

[BLM] U.S. Bureau of Land Management. 2006. Record of Decision: West Mojave Plan, an Amendment to the California Desert Conservation Area Plan 1980. Dated March 2006. Sacramento, CA.

U.S. Bureau of Land Management. 2016. Record of Decision for the Land Use Plan Amendment to the California Desert Conservation Plan, Bishop Resource Management Plan, and Bakersfield Resource Management Plan for the Desert Renewable Energy Conservation Plan (DRECP). Dated September 2016. Sacramento, CA.